

Specifies certain requirements for laboratories, the state department of health, local health departments, residential rental property owners, child care providers, and retail establishments related to childhood lead poisoning prevention. Provides for a civil penalty to be assessed by the state department for noncompliance with certain provisions. Establishes the childhood lead poisoning prevention fund for outreach and prevention activities. Establishes a lead safe housing advisory council to make recommendations related to lead poisoning prevention. Makes conforming amendments.

1 SECTION 1. IC 13-25-3-9 IS AMENDED TO READ AS FOLLOWS

2 [EFFECTIVE UPON PASSAGE]: Sec. 9. (a) If a disclosure document recorded under
3 section 8(a)(1) of this chapter reports the existence of an environmental defect on a
4 property, a person who has a financial interest in the property may record, in the same
5 county recorder's office in which the disclosure document is recorded, a document that
6 reports that the environmental defect has been eliminated from the property.

7 (b) **Except as provided in subsection (c),** a professional engineer registered
8 under IC 25-31-1 who does not have a financial interest in the property must certify a
9 document filed under this section.

10 (c) **A lead based paint inspector licensed under IC 13-17-14 who does not**
11 **have a financial interest in the property must certify a document concerning lead**
12 **based paint abatement filed under this section.**

13 SECTION 2. IC 16-18-2-9.3 IS ADDED TO THE INDIANA CODE AS A **NEW**
14 **SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9.3.**
15 **"Advisory council", for purposes of IC 16-41-39.4, refers to the lead-safe housing**
16 **advisory council established by IC 16-41-39.4-6.**

17 SECTION 3. IC 16-18-2-56.2 IS ADDED TO THE INDIANA CODE AS A
18 **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec.**
19 **56.2. "Clearance examination" means an activity, conducted by a clearance**
20 **examiner who is licensed under IC 13-17-14, to establish proper completion of**
21 **interim controls (as defined in 24 C.F.R. 35.110).**

22 SECTION 4. IC 16-18-2-69.2 IS ADDED TO THE INDIANA CODE AS A
23 **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec.**
24 **69.2. "Consumer product", for purposes of IC 16-41-39.4, means an item or a**

1 **component of an item that is produced or distributed for:**

2 **(1) sale to a consumer for use; or**

3 **(2) the personal use, consumption, or enjoyment of a consumer.**

4 SECTION 5. IC 16-18-2-143, AS AMENDED BY P.L.234-2007, SECTION 45,
5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 143.

6 (a) "Fund", for purposes of IC 16-26-2, has the meaning set forth in IC 16-26-2-2.

7 (b) "Fund", for purposes of IC 16-31-8.5, has the meaning set forth in
8 IC 16-31-8.5-2.

9 **(c) "Fund", for purposes of IC 16-41-39.4, has the meaning set forth in**
10 **IC 16-41-39.4-3.1.**

11 ~~(c)~~ **(d)** "Fund", for purposes of IC 16-46-5, has the meaning set forth in
12 IC 16-46-5-3.

13 ~~(d)~~ **(e)** "Fund", for purposes of IC 16-46-12, has the meaning set forth in
14 IC 16-46-12-1.

15 ~~(e)~~ **(f)** "Fund", for purposes of IC 16-41-42, has the meaning set forth in
16 IC 16-41-42-2.

17 SECTION 6. IC 16-18-2-198.5 IS ADDED TO THE INDIANA CODE AS A
18 NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec.**
19 **198.5. "Lead based paint activities", for purposes of IC 16-41-39.4, has the meaning**
20 **set forth in IC 13-11-2-118.5.**

21 SECTION 7. IC 16-18-2-214.7 IS ADDED TO THE INDIANA CODE AS A
22 NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec.**
23 **214.7. "Low income", for purposes of IC 16-41-39.4, means having not more than**
24 **eighty percent (80%) of the median income level of households in a particular**
25 **county as determined annually by the federal Department of Housing and Urban**
26 **Development.**

27 SECTION 8. IC 16-18-2-292.7 IS ADDED TO THE INDIANA CODE AS A
28 NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec.**
29 **292.7. "Primary prevention", for purposes of IC 16-41-39.4, means the removal of**
30 **lead hazards before lead poisoning of an individual occurs.**

SECTION 9. IC 16-41-39.4-3, AS AMENDED BY P.L.135-2005, SECTION 5,
IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a)
A person that examines the blood of an individual described in section 2 of this chapter
for the presence of lead must report to the state department the results of the examination
not later than one (1) week after completing the examination. The report must include at
least the following:

(1) With respect to the individual whose blood is examined:

- (A) the **full** name;
- (B) the date of birth;
- (C) the gender;
- (D) the race **and ethnicity; and**
- (E) the **full address, including street address, city, and zip code;**
- (F) the **county of residence;**
- (G) the **parent's or guardian's name and phone number, where applicable; and**
- ~~(E)~~ (H) any other information that is required to be included to qualify to receive federal funding.

(2) With respect to the examination:

- (A) the date;
- (B) the type of blood test performed;
- (C) the person's normal limits for the test;
- (D) the results of the test; and
- (E) the person's interpretation of the results of the test.

(3) The names, addresses, and telephone numbers of:

- (A) the person **examining the blood; and**
- (B) the attending physician, hospital, clinic, or other specimen submitter.

(b) If a person required to report under subsection (a) has submitted more than
fifty (50) results in the previous calendar year, the person must submit subsequent reports

1 in an electronic format determined by the state department.

2 (c) If a person required to report under subsection (a) fails to provide
3 complete information after notification by the state department, the state
4 department may, in accordance with IC 4-21.5, assess a civil penalty against the
5 person in an amount equal to two thousand, five hundred dollars (\$2,500) for each
6 incomplete report that is submitted after receipt of the notification. Money received
7 by the state department under this subsection shall be deposited in the fund.

8 (d) The state department shall inform an elementary school or a secondary
9 school attended by an individual about whom the state department receives a report
10 under this section of the contents of the report. The school receiving the
11 information:

12 (1) shall first enter into a written agreement with the state department
13 to maintain the confidentiality of the information received; and

14 (2) shall not disclose the information to any person without the
15 written consent of the individual or the parent or guardian of the
16 individual.

17 SECTION 10. IC 16-41-39.4-3.1 IS ADDED TO THE INDIANA CODE AS A
18 NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 3.1.**

19 (a) As used in this section, "fund" refers to the childhood lead poisoning prevention
20 fund established by subsection (b).

21 (b) The childhood lead poisoning prevention fund is established for the
22 purpose of funding childhood lead poisoning outreach and prevention activities. The
23 fund shall be administered by the state department.

24 (c) The expenses of administering the fund shall be paid from money in the
25 fund.

26 (d) Money in the fund consists of:

27 (1) civil penalties assessed under section 3 of this chapter; and

28 (2) gifts; and

29 (3) appropriations from the general assembly.

30 (e) The treasurer of state shall invest the money in the fund not currently

1 needed to meet the obligations of the fund in the same manner as other public
2 money may be invested. Interest that accrues from these investments shall be
3 deposited in the fund.

4 (f) Money in the fund at the end of a state fiscal year does not revert to the
5 state general fund.

6 SECTION 11. IC 16-41-39.4-6 IS ADDED TO THE INDIANA CODE AS A
7 NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 6.**

8 (a) The lead-safe housing advisory council is established to advise the state
9 department concerning housing related lead poisoning prevention activities.

10 (b) The advisory council consists of the following members:

11 (1) The state health commissioner, or the state health commissioner's
12 designee, who shall serve as the chairperson of the advisory council.

13 (2) The director of the Indiana housing and community development
14 authority or the director's designee.

15 (3) The local health officer of each of three (3) local health
16 departments, appointed by the state health commissioner to represent
17 a diverse geographic and population mix, or the local health officer's
18 designee.

19 (4) The following individuals, appointed by the governor:

20 (A) A representative of realtors in Indiana.

21 (B) A representative of home builders in Indiana.

22 (C) A pediatrician or other physician with knowledge of lead
23 poisoning.

24 (D) A representative of the private lead based paint abatement
25 industry who is licensed under IC 13-17-14 to perform or
26 supervise lead based paint activities.

27 (E) A representative of a community based organization
28 located in a community with a significant concentration of high
29 risk lead contaminated properties, as determined by a high
30 prevalence in the community of:

1 (i) low income families with children with lead
2 poisoning; and

3 (ii) housing units that were built before 1978.

4 (F) A parent of a child with lead poisoning.

5 (G) A representative from a child or health advocacy
6 organization.

7 (H) A residential tenant.

8 (I) A representative of the paint and coatings industry.

9 (J) A representative of public housing administrators.

10 (K) A representative of residential rental property owners.

11 (L) A representative of licensed lead paint training providers.

12 (M) A representative of community action program agencies.

13 (N) A representative of the banking industry.

14 (c) The advisory council shall meet at least quarterly. The first meeting of the
15 advisory council shall occur not later than July 1, 2008.

16 (d) Not later than April 1, 2009, the advisory council shall submit to the
17 governor, the attorney general, and the legislative council in electronic format under
18 IC 5-13-6 a report containing recommendations of the advisory council concerning
19 the following:

20 (1) Development of a primary prevention program to address housing
21 related lead poisoning.

22 (2) Development of a sufficient number of licensed lead inspectors,
23 abatement workers, and contractors.

24 (3) Ensuring lead safe work practices in remodeling, rehabilitation,
25 and weatherization work.

26 (4) Funding mechanisms to assist residential property owners with the
27 cost of lead abatement and mitigation.

28 (5) A procedure for distribution of funds from the Indiana lead trust
29 fund established by IC 13-17-14-6 to pay the cost of implementation of
30 40 C.F.R. 745 for lead based paint activities in target housing and

1 child occupied facilities.

2 (6) A program to ensure that the resale of recycled building products
3 does not pose significant risk of lead poisoning to children.

4 (7) Necessary statutory or administrative rule changes to improve the
5 effectiveness of state and local lead abatement and other lead
6 poisoning prevention and control activities.

7 (e) The state department shall staff the advisory council.

8 (f) The expenses of the advisory council shall be paid by the state
9 department.

10 (g) Each member of the advisory council who is not a state employee is not
11 entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b). The
12 member is, however, entitled to reimbursement for traveling expenses as provided
13 under IC 4-13-1-4 and other expenses actually incurred in connection with the
14 member's duties as provided in the state policies and procedures established by the
15 Indiana department of administration and approved by the budget agency.

16 (h) Each member of the advisory council who is a state employee is entitled to
17 reimbursement for traveling expenses as provided under IC 4-13-1-4 and other
18 expenses actually incurred in connection with the member's duties as provided in
19 the state policies and procedures established by the Indiana department of
20 administration and approved by the budget agency.

21 (i) A consensus of the majority of the members appointed to the advisory
22 council is required for the advisory council to take action on any measure, including
23 final reports.

24 SECTION 12. IC 16-41-39.4-7 IS ADDED TO THE INDIANA CODE AS A
25 NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7.

26 (a) A retail establishment that sells paint or painting products shall do all of the
27 following:

28 (1) Post a sign in an area visible to customers providing information
29 concerning lead based paint hazards.

30 (2) Offer for sale a lead test kit that is capable of determining the

1 presence of a lead based paint hazard.

2 (3) Provide to customers the federal Environmental Protection Agency
3 pamphlet, "Protect Your Family from Lead in Your Home", or a
4 similar source of information approved by the state department.

5 (4) Ensure that employees who provide advice to customers
6 concerning paint and paint products attend training programs
7 concerning lead hazards.

8 (b) A person that sells, offers for sale, or distributes a consumer product shall
9 not remove, erase, or obscure the visibility of a statement that:

10 (1) the manufacturer or wholesaler of the consumer product places on
11 the consumer product or the container or wrapper in which the
12 consumer product is contained; and

13 (2) specifies that the consumer product contains or may contain lead.

14 (c) A person shall not sell or offer for sale at wholesale or retail, or distribute
15 a consumer product, surface coating material, food product, or food packaging that
16 is:

17 (1) intended primarily for use by a child;

18 (2) reasonably expected to be accessible to, chewed, or ingested by a
19 child who is less than seven (7) years of age; or

20 (3) intended to be chewed or ingested by a child;

21 unless the consumer product, surface coating material, food product, or food
22 packaging meets the requirements of subsection (d).

23 (d) One (1) of the following requirements must be met for a person to be
24 allowed to sell, offer for sale, or distribute an item described in subsection (c):

25 (1) The lead content of each of the following is less than
26 six-hundredths percent (0.06%) by weight:

27 (A) The item.

28 (B) Each component of the item.

29 (C) The surface coating of the item.

30 (2) The person provides to the state department written

documentation that:

(A) the manufacturer or importer of the item has determined that the item is not a hazardous substance in accordance with 16 C.F.R. 1500.23, as in effect on January 1, 2007; and

(B) meets the following requirements:

(i) Is consistent with 16 C.F.R. 1500.23, as in effect on January 1, 2007 .

(ii) Specifies the total amount of lead contained in the item.

(iii) Specifies the bioavailability of the lead contained in the item.

(iv) Specifies the accessibility to children of the lead contained in the item.

(v) Specifies the age and foreseeable behavior of children who are reasonably anticipated to be exposed to the item.

(vi) Specifies the foreseeable duration of an exposure described in item (v).

(vii) Specifies the reasonably anticipated marketing, patterns of use, and life cycle of the item.

(e) If the state department, based on:

(1) test results performed by a certified laboratory at the state department's request;

(2) information received from a federal agency; or

(3) other reliable information;

has reason to believe that the lead content of an item described in subsection (c) is likely to exceed the limits specified in subsection (d)(1), the state department may demand in writing that the person described in subsection (c) provide to the state department, not more than seven (7) days after the person receives the demand, the written documentation described in subsection (d)(2).

1 **(f) If written documentation demanded under subsection (e):**

2 **(1) is not provided to the state department as required under**
3 **subsection (e); or**

4 **(2) does not meet the requirements of subsection (d)(2);**

5 **the person of which the demand is made under subsection (e) shall immediately**
6 **cease the action described in subsection (c) until the person receives written notice**
7 **from the state department that the person has met the requirements of this section.**

8 **(g) The state department may seize an item that is sold, offered for sale, or**
9 **distributed in violation of this section.**

10 **(h) A violation of this section is a Class A misdemeanor.**

11 **(i) The state department shall, not later than May 1, 2009, adopt rules under**
12 **IC 4-22-2 to implement this section. The rules adopted under this subsection:**

13 **(1) may:**

14 **(A) include exceptions to the types of items described in**
15 **subsection (c) upon the state department's determination that**
16 **the risk posed to children by an item is minimal;**

17 **(B) require labeling of an item to reflect that the item contains**
18 **lead; or**

19 **(C) require a retailer to otherwise warn consumers of the**
20 **presence of lead in an item; and**

21 **(2) shall be consistent with federal law.**

22 **SECTION 13. IC 16-41-39.4-8 IS ADDED TO THE INDIANA CODE AS A**
23 **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 8.****
24 **This section applies to a child care provider that:**

25 **(1) is required to be licensed or registered under IC 12-17.2; or**

26 **(2) receives a voucher payment (as defined in IC 12-17.2-3.5-3).**

27 **(b) A child care provider that is located in a building that was built before**
28 **1978 shall:**

29 **(1) ensure that the building is at least annually assessed for lead**
30 **hazards by a person who is licensed under IC 13-17-14-3; and**

1 (2) if a lead hazard is found, isolate from children the area with the
2 lead hazard until the lead hazard is remediated and the area is
3 demonstrated to be lead hazard free through a clearance examination.

4 (c) Before enrollment of a child who is at least nine (9) months old in a child
5 care program, the parent or guardian of the child shall provide to the child care
6 provider proof of a blood lead level test for the child.

7 (d) A child care provider shall ensure that at least one (1) employee of the
8 child care provider is attends training concerning lead hazards, including a lead
9 based paint rules awareness course approved by the department of environmental
10 management, and does the following:

11 (1) Provides current lead hazard education to parents, guardians,
12 caregivers, and child care provider employees.

13 (2) Maintains current knowledge concerning product recalls related to
14 lead hazards.

15 (3) Performs regular child care facility assessments to identify lead
16 hazards.

17 (4) Acts to remove any lead hazards from the child care facility.

18 (e) A child care provider or employee of a child care provider that performs
19 the individual's duties under subsection (d) in good faith is immune from civil
20 liability related to the performance of the duties. This subsection does not apply to
21 an act or omission that amounts to gross negligence or willful or wanton
22 misconduct.

23 SECTION 14. IC 16-41-39.4-9 IS ADDED TO THE INDIANA CODE AS A
24 NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 9.**

25 (a) The state department shall, not later than July 1, 2009, adopt rules under
26 IC 4-22-2 to establish a lead safe work practices training program for contractors,
27 renovators, and remodelers who:

28 (1) perform work on housing units that were built before 1978; and

29 (2) disturb lead based paint in the housing units.

30 (b) The rules adopted under subsection (a) shall comply with the federal

1 **Toxic Substances Control Act (15 U.S.C. 2681 et seq.) and any federal regulations**
2 **adopted under the Act.**

3 SECTION 15. IC 16-41-39.4-10 IS ADDED TO THE INDIANA CODE AS A
4 **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10.**

5 **(a) If the state department or a local health department determines that lead**
6 **hazards in a housing unit have caused or contributed to elevated blood lead levels in**
7 **an individual, the owner of the housing unit shall submit a remediation plan to the**
8 **state department or local health department for approval.**

9 **(b) The remediation plan required in subsection (a) must include:**

10 **(1) a clearance examination after remediation activities are complete;**

11 **and**

12 **(2) a subsequent annual clearance examination.**

13 **(c) The state department or local health department may not approve a**
14 **remediation plan that does not provide for remediation of the lead hazards**
15 **regardless of whether the plan states that the housing unit will not be rented to**
16 **families with children.**

17 **(d) The owner of a housing unit shall, not later than ninety (90) days after**
18 **approval of a remediation plan submitted under this section, complete the**
19 **remediation. The state department or local health department may grant the**
20 **property owner an extension of time if the property owner demonstrates that the**
21 **work cannot reasonably be completed within ninety (90) days and will be completed**
22 **as expeditiously as possible.**

23 **(e) The owner of a housing unit for which a remediation plan is required**
24 **shall do the following:**

25 **(1) Relocate tenants of the housing unit to a lead safe dwelling at the**
26 **owner's expense until the lead hazards in the housing unit have been**
27 **remediated. However, the tenant may remain in the housing unit if:**

28 **(A) the remediation plan uses lead safe work practices; and**

29 **(B) the owner documents to the state department or local**

30 **health department that the workers designated to make the**

1 necessary repairs have been licensed under IC 13-17-14 to
2 perform lead safe work practices.

3 (2) Offer to relocate, and relocate a tenant who accepts the offer, a
4 tenant if the tenant is expected to be without the use of a bathroom or
5 kitchen in the housing unit for more than eight (8) hours.

6 (f) The owner of a housing unit may not evict or change the terms of a
7 tenant's lease in retaliation for the tenant's report to a governmental agency related
8 to the presence of lead hazards on the property. There is a rebuttable presumption
9 that an owner is taking retaliatory action if the owner:

10 (1) initiates eviction proceedings;

11 (2) increases the rent; or

12 (3) makes other changes to the rental agreement;

13 less than two (2) years after the tenant's report is made to a governmental agency.

14 (g) The owner of a rental housing unit that was built before 1978 shall have
15 one (1) lead based paint inspection performed by a lead based paint inspector
16 licensed under IC 13-17-14 on the earlier of the following:

17 (1) Before the sale of the property.

18 (2) Before the housing unit is rented to a new tenant.

19 (3) Before the owner applies for a local or state building permit for
20 renovation, remodeling, rehabilitation, or other construction activity.

21 (4) The following schedule:

22 (A) For a housing unit built before 1940, before January 1,
23 2009.

24 (B) For a housing unit built after 1939 and before 1950, before
25 January 1, 2011.

26 (C) For a housing unit built after 1949 and before 1960, before
27 January 1, 2013.

28 (D) For a housing unit built between 1960 and 1978, before
29 January 1, 2015.

30 The presence of lead based paint is considered to be an environmental defect and is

1 **subject to IC 13-25-3.**
2 SECTION 16. **An emergency is declared for this act.**
3